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1. First Amendment Claim

Standing

For plaintiff to have standing she must show an injury in fact that is caused by government and is redressable by the court.

Here, Paloma has been wearing her tattoo for years that represent her as a peaceful person, and as a Senior she is told that to conform with a new rule, she has to wear long sleeve to cover the tattoo on her wrist or have it removed. Because this will violate her first amendment right of free self expression as a peaceful person, there is an injury in fact.

The District, a government Public School District agent, education arm of the state has adopted the rule that will enforce Paloma's tattoo removal. This element is met.

Redressable by court because Paloma has brought a declaratory relief action challenging the validity of District's policy under the First and fourteenth Amendment of the United States Constitution. The court will be able to redress this issue since it is not merely an advisory opinion but to determine if the rule violates the 1st and 14th Amendment of the US Constitution.

Paloma has standing.

State Action

Supra

District is a government agent.

There is state action.

Governmental Regulation of speech Restriction

For government to govern speech or expression it has to ensure that the regulation is not

overbroad, vague, prior restraint and there is not unfettered discretion.

Overbroad regulation.

An overbroad regulation is one that encompasses protected and unprotected speech.

Here, when the school rule states that "No student shall wear any label, insignia, words, color, signs or symbols that reflect gang related activities, it covers protected speech in the prohibited symbols, colors, words, etc. However, the qualifying section 'that reflects gang related activities' is prohibited. As a result, the District will be correct in stating that the rule is not overbroad because it specifies the type of prohibited items.

Rule is not overbroad.

Prior Restraint

Prior Restraint will cause a hesitation to the expression of ideas.

Here, because the rule would make students hesitant in getting tattoos that could represent non-gang related activities, it is found to cause prior restraint. For example, Paloma's tattoo which, her self-expression as a peaceful person was told to be covered with long sleeve or have it removed would be a reaffirming that other students will be hesitant to wear any tattoos.

Rule is of prior restraint.

Vagueness

A vague rule is one that a reasonable person would not be able to fully apply it or understand the parameters of the rule.

Here, the gang related activities tattoos is subject to what a gang believes a tattoo should entail. This will be subject to change in the future and so the rule is vague for not having more defined specifications that a reasonable student would now how to comply with the rule while selecting a tattoo.

The rule is void for vagueness.

Unfettered discretion

Government agent that execute the rule has to be guided by specific measures to ensure that compliance to the rule is not at their subjective discretions.

Here, for several years, Paloma, a high school senior has had a small tattoo of a dove on her wrist, her 'self expression' as a peaceful person. Paloma never had associated with any gangs. After learning of Paloma's tattoo, District officials described it to local law enforcement officials who said that 'it sounded like' a Westsider gang symbol.

As a result, because the school district itself did not have any specified guidelines to know which symbols would fit a prohibited tattoo, it was left to their discretion to determine such. Furthermore, unfettered discretion was met when the local officer could only guess by saying "it sounded like," this was in their opinion. As a result, this rule is left to unfettered discretion of enforcing officials.

The rule violates the prior restraint, overbroad, vague and unfettered discretion restrictions.

The first Amendment applicable to the states through the fourteenth amendment prohibits government from prohibiting free protected speech.

Symbolic Speech

Symbolic Speech requires the government to show that the regulation is necessary for a compelling government interest.

Content Based Speech

For government to regulate the content or viewpoint of a speech it has to show that the regulation is narrowly tailored to meet a compelling government interest.

Here, District a government agent in an attempt to reduce gang violence in District's high schools, after consulting with local law enforcement adopted the rule for all high school student shall wear any label, insignia, words, colors, signs or symbols that reflect gang related activities. Students violating the policy will be immediately suspended or expelled

from school.'

The district will attempt to show that such a rule is necessary as it will reduce any upsurge in gang violence in its schools. However, because the most violence results from two gangs, the WestSiders and East Siders the rule is not narrowly tailored to these gangs and as a result the rule may not be necessary as it is overly broad because there may be gangs that are not violent in the schools. The symbols and other signs will not be enough to prevent the gangs from confrontations unless it is the appearance of the symbol, colors, insignia etc that instigate the fights. Usually because there are other reasons why gangs fight and not only by seeing the symbol etc they start fighting on impulse, the District's rule may not be necessary in addressing this compelling government objective.

If the District is able to show that it is the appearance of the symbols, insignia, colors etc that the student use to fight each other and increase the serious it would be compelling and necessary that the symbols not be used and tattoos be banned. As a result the rule is not necessary as it is overly broad and there are alternative means to address the most violence results resulting from the two named gangs.

However, because the rule is not viewpoint neutral, it is invalid as it is not necessary.

Freedom of association

Not all gangs may be violent and the rule may be overly broad in including these gangs and their tattoos. The school may however argue that the school may be regulated by its guidelines according to content neutral scrutiny where the rule would pass rational basis test

Fourteenth Amendment Claim

Due Process

Substantive due process to free speech will be violated.

The district will not meet strict scrutiny

Paloma will prevail

Procedural Due Process

Paloma should get due process of adequate notice and hearing.

Paloma was denied adequate notice and hearing when she was told to remove the tattoo, or be expelled. Paloma did not get adequate hearing because the school officials merely asked the local officers and they responded that the tattoo sounded like a gang sign.

Procedural due process violated.

2. Procedural Claim to dismiss Paloma's suit- Mootness

Paloma's claim will be moot as she is now graduated and attending a college of her choice. Unless the District will affect the rules at College she will not prevail in her case.

Paloma's case will be dismissed for mootness

Ripeness

CASE IS READY FOR ADJUDICATION.

Paloma's case was ripe for review but now she has graduated her case is moot.

District will win by the court dismissal of Paloma's case

Definition of 'gang related activities

Question #2 Final Word Count = 1222

END OF EXAM